

State of California  
California Regional Water Quality Control Board  
Santa Ana Region

February 29, 2008

**ITEM:** 15

**SUBJECT:** Order No. R8-2008-0032 Affirming Administrative Civil Liability Complaint No. R8-2008-0012, Orozco International (Orozco), Rancho Cucamonga, San Bernardino County

**BACKGROUND**

On January 3, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2008-0012 (copy attached) to Orozco for alleged violations of the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). In the ACL, the Executive Officer proposed an assessment of \$4,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Orozco.

ACL No. R8-2008-0012 was issued by the Assistant Executive Officer to Orozco for violations of the General Permit, including the failure of Orozco to submit the 2006-2007 annual report by the July 2, 2007 deadline.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$830), with the State Water Resources Control Board.

On January 10, 2005, Orozco filed a NOI and obtained coverage under the General Permit, WDID No. 8 361019263. The General Permit requires submittal of an annual report by July 1 of each year. Orozco did not submit the annual report by the July 2, 2007 deadline (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Orozco. The first NNC was mailed on August 7, 2007, and was received by the facility on August 9, 2007. The second NNC was issued on September 10, 2007, again by certified mail. The facility received the second NNC on September 11, 2007.

In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007. In addition, Board staff called Mr. Orozco on October 4, 2007, and left a message reminding him that the annual report must be submitted by October 10, 2007, or a penalty would be assessed. As of February 14, 2008, the annual report had not been received.

This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.

Orozco failed to submit the annual report to the Regional Board office within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that a mandatory penalty shall be imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000). In addition, Water Code Section 13385(c) provides that administrative civil liability may be imposed on any person who violates waste discharge requirements in an amount not to exceed \$10,000 per day of violation.

Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 186 days (from July 2, 2007 to January 3, 2008, ACL issuance date). The maximum liability for this violation is \$1,860,000.

A detailed discussion of the factors under Section 13385(e) used as the basis to determine the amount of civil liability is included in Complaint No. R8-2008-0012 (attached). After consideration of those factors, including the history of violations, the Assistant Executive Officer proposed that civil liability be imposed on Orozco in the amount of \$4,000.

### **STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

**RECOMMENDATION**

Board staff recommends that the Board affirm the assessment of \$4,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on January 3, 2008, by adopting Order No. R8-2008-0032.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Order No. R8-2008-0032</b>
	)	<b>for</b>
<b>Orozco International</b>	)	<b>Administrative Civil Liability</b>
<b>9871 8th Street</b>	)	
<b>Rancho Cucamonga, CA 91730</b>	)	
	)	
<b><u>Attention: Mr. Fernando Orozco</u></b>	)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on February 29, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0012, dated January 3, 2008, and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code Sections 13385 and 13399.33 in the amount of \$4,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Orozco International (Orozco), located at 9871 8th Street, Rancho Cucamonga, is authorized to discharge storm water under the Permit, WDID 8 361019263. The Permit requires submittal of an annual report by July 1 of each year. Orozco did not submit the annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Non-Compliance (NNCs) to Orozco. The first NNC was mailed on August 7, 2007, and was received by the facility on August 9, 2007. The second NNC was issued on September 10, 2007, again by certified mail. The facility received the second NNC on September 11, 2007.
2. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also warned about the mandatory penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007.
3. In addition, Board staff left a message for Mr. Orozco on October 4, 2007 reminding him that the annual report must be submitted by October 10, 2007, or a penalty would be assessed for the non-submittal of the 2006-2007 annual report. The annual report has not been received.

4. The facility violated the Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
5. Water Code Section 13399.33(c) requires the Board to assess a mandatory penalty of one thousand dollars (\$1,000) for failure to submit the annual report. In addition, Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed \$10,000 per day of violation. The total maximum liability for failure to submit the annual report is \$1,860,000.
6. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing an amount of civil liability, including prior history of violations. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability imposed on Orozco.
7. On January 3, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R8-2007-0012 to Orozco proposing that the Board impose civil liability in the amount of \$4,000 on Orozco for failure to submit the annual report by the due date.
8. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code Sections 13385 and 13399.33, administrative civil liability shall be imposed on Orozco, in the amount of \$4,000, as proposed in Complaint No. R8-2008-0012 for the violations cited, payable as set forth below.

1. Orozco shall pay \$4,000 to the State Water Resources Control Board by March 31, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, Orozco may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit a petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 29, 2008.

---

Gerard J. Thibeault  
Executive Officer

Tentative

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R8-2008-0012</b>
	)	<b>for</b>
<b>Orozco International</b>	)	<b>Administrative Civil Liability</b>
<b>9871 8th Street</b>	)	
<b>Rancho Cucamonga, CA 91730</b>	)	
	)	
<b><u>Attention: Mr. Fernando Orozco</u></b>	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on February 29, 2008 at the City Council Chambers, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed penalty or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Orozco International (Orozco), 9871 8th Street, Rancho Cucamonga, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 361019263. The General Permit requires submittal of an annual report by July 1 of each year.
5. The 2006-2007 annual report, which was due on July 2, 2007 (July 1, 2007 being a Sunday), was not received from Orozco. A Notice of Non-Compliance (NNC) was issued to Orozco by certified mail, on August 7, 2007. The return receipt showed that it was received by the facility on August 9, 2007. When Board staff received no response to the first NNC, a second NNC was issued on September 10, 2007, again by certified mail, and was received by the facility on September 11, 2007. In

both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 10, 2007.

6. On October 4, 2007, Board staff called Mr. Fernando Orozco and left a message indicating that the annual report must be submitted to the Board by October 10, 2007, or a penalty would be assessed for the non-submittal of the 2006-2007 annual report. As of the date of this complaint, the annual report has not been received.
7. This facility violated the General Permit, the federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
8. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
9. Based on non-submittal of the 2006-2007 annual report, the facility is alleged to have violated the General Permit for 185 days (from July 2, 2007 to January 3, 2008). The maximum liability for this violation is \$1,850,000.
10. Section 13399.33(c) of the California Water Code requires that the Board impose a mandatory minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
11. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table:



Factor	Comment
<b>A. Nature, Circumstance, Extent, and Gravity of Violation</b>	Orozco did not submit its annual report in a timely manner. The facility is currently regulated under the State's General Permit, which requires them to submit the annual report and all related sampling results by July 1 of each year.
<b>B. Culpability</b>	Orozco failed to submit its annual report as required by the General Permit. Orozco received two certified letters and a phone call reminding them that the annual report was overdue and of the consequences of non-submittal.
<b>C. Economic Benefit or Savings</b>	Staff estimates that Orozco saved approximately \$1,000 during the 2006-2007 reporting year by not submitting its annual report (assuming that the facility did not collect and analyze storm water samples). The savings due to delaying the submittal of the annual report itself are negligible.
<b>D. Prior History of Violations</b>	Orozco does not have any prior history of violations.
<b>E. Other Factors</b>	Board staff spent at least 15 hours of staff time in its efforts to bring this facility into compliance (average rate @\$115.00 per hour, the total cost for staff time is \$1,725).
<b>F. Ability to pay</b>	Orozco has not provided any information to indicate that it is unable to pay the proposed assessment.

14. After consideration of these factors, the Assistant Executive Officer proposes that civil liability be imposed on Orozco in the amount of \$4,000. This amount includes \$1,000 of mandatory penalty under Section 13399.33 and \$3,000 assessment under Section 13385 of the Water Code.

### WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check payable to the State Water Resources Control Board for \$4,000. The waiver form and the check should be mailed to this office in the enclosed preprinted envelope.

If you have any questions, please contact Kathleen Fong at (951) 774-0114 or Milasol C. Gaslan at (951) 782-4419.

1/3/08  
Date

Kurt V. Berchtold  
Kurt V. Berchtold  
Assistant Executive Officer

In the matter of: )  
 )  
Orozco International )  
9871 8th Street )  
Rancho Cucamonga, CA 91730 )  
 )  
Attention: Mr. Fernando Orozco )

Complaint No. R8-2008-0012  
for  
Administrative Civil Liability

### WAIVER OF HEARING

I agree to waive the right of Orozco International to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0012.

I have enclosed a check, payable to the State Water Resources Control Board, in the amount of \$4,000. I understand that I am giving up the right of Orozco International to be heard and to argue against allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Orozco International